

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW R. PERRONG  
1657 THE FAIRWAY #131  
JENKINTOWN, PA 19046

Plaintiff

vs.

CMI MARKETING RESEARCH, INC.  
10712 COUNTY LINE ROAD, UNITS 6 & 7  
HUDSON, FL 34667

and

CAROL MCMAHON  
AKA CAROL O'NEILL  
135 CASE RD.  
CUTCHOGUE, NY 11935

Defendants.

Case No. 2:22-cv-03733-JFM

JURY TRIAL DEMANDED

**PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY  
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Plaintiff respectfully files this Notice of Supplemental Authority in Opposition to Defendants' motion to dismiss. Yesterday, Judge Baylson issued the first opinion in this Court addressing the Third Circuit's decision in *Panzarella*, cited in both Plaintiff and Defendants' briefs. There, Judge Baylson stated that the ATDS question "is a mixed question of fact and law" and denied defendants' motion, holding there was a genuine issue of material fact as to whether a particular telephone system qualified as an ATDS under *Panzarella*. *Smith v. Vision Solar LLC*, No. 20-2185, 2023 WL 2539017 at \*2 (E.D. Pa. Mar. 16, 2023).

Because the opinion makes clear that, after *Panzarella*, an ATDS system's capability is for the factfinder to determine, Defendants' motion to dismiss should be denied.

Dated: **March 17, 2023**

/s/

Andrew R. Perrong  
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#### **CERTIFICATE OF SERVICE**

Plaintiff certifies that on March 17, 2023, he filed the foregoing on the Court's Electronic Document Submission (EDS) system for *pro-se* litigants.